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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 HILDA L. SOLIS, Secretary of Labor,
8 United States Department of Labor,

9 Plaintiff,

10 v.

11 STATE OF WASHINGTON,
12 DEPARTMENT OF SOCIAL AND
13 HEALTH SERVICES,

14 Defendant.

CASE NO. C08-5479BHS

ORDER DENYING
PLAINTIFF'S MOTION TO
STRIKE DEFENDANT'S
DEFENSES AND
AFFIRMATIVE DEFENSES

15 This matter comes before the Court on Plaintiff's Motion to Strike Defendant's
16 Defenses and Affirmative Defenses (Dkt. 37). The Court has considered the pleadings
17 filed in support of and in opposition to the motion and the remainder of the file and
18 hereby denies the motion for the reasons stated herein.

19 **I. PROCEDURAL HISTORY**

20 On July 31, 2008, Plaintiff Elaine L. Chao¹, Secretary of Labor, United States
21 Department of Labor, filed a complaint against the State of Washington, Department of
22 Social and Health Services ("DSHS"). Dkt. 1. Plaintiff seeks to enjoin Defendant from
23 alleged violations of the Fair Labor Standards Act of 1938 ("FLSA") and "for the
24 recovery of a Judgment against Defendant for unpaid overtime compensation due
25 Defendant's employees." *Id.* at 1.

26 On October 20, 2009, Defendant moved for leave to amend its Answer. Dkt. 23.
27 On October 27, 2009, Plaintiff responded and argued that allowing Defendant to amend

28 ¹ The caption has been changed to reflect the confirmation of Secretary Hilda A. Solis.

1 would cause prejudice and undue delay. *See* Dkt. 26. On December 1, 2009, the Court
2 granted Defendant leave to amend. Dkt. 35. On December 2, 2009, Defendant filed an
3 Amended Answer. Dkt. 36.

4 On December 10, 2009, Plaintiff filed a Motion to Strike Defendant's Defenses
5 and Affirmative Defenses. Dkt. 37. On December 21, 2009, Defendant responded. Dkt.
6 40. On December 28, 2009, Plaintiff replied. Dkt. 44.

7 **II. DISCUSSION**

8 The court may strike from a pleading an insufficient defense or any redundant,
9 immaterial, impertinent, or scandalous matter. Fed. R. Civ. P. 12(f). Motions to strike
10 are generally disfavored because of the limited importance of pleadings in federal practice
11 and because it is usually used as a delaying tactic. William Schwarzer, *et al.*, *Federal*
12 *Civil Procedure Before Trial* § 9:375.

13 In this case, Plaintiff requests that the Court strike Defendant's defenses ##2, 5, 6,
14 7, 9, 10, 14 and 15. Dkt. 37 at 1. Plaintiff argues that Defendant has failed to provide
15 "fair notice" as to these defenses because Defendant has failed to state whether each
16 defense is a defense or an affirmative defense. *Id.* at 3. Plaintiff's argument is without
17 legal support and without merit. Therefore, the Court denies Plaintiff's motion on this
18 issue.

19 Plaintiff also requests that the Court strike defense #10 because it is redundant.
20 Dkt. 37 at 3. In defense #10, Defendant seeks to limit the remedies available to Plaintiff
21 to the remedies that are available under the FLSA. Dkt. 40 at 7-8. The Court finds that
22 the defense is not redundant and should be addressed on the merits. Therefore, the Court
23 denies Plaintiff's motion on this issue.

24 Plaintiff also requests that the Court strike defense #14 because it "lacks a
25 colorable argument." Dkt. 37 at 4-6. Defendant counters that its sovereign immunity
26 defense presents a substantial question of law and is more suitable for a dispositive
27 motion. Dkt. 40 at 8-10. The Court agrees to the extent that it would be inappropriate to
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1 decide this issue on a Rule 12(f) motion. Therefore, the Court denies Plaintiff's motion
2 on this issue.

3 Finally, Plaintiff requests that the Court strike defense #15 which is based on the
4 doctrines of unclean hands and estoppel. Dkt. 37 at 6-8. Defendant counters that unclean
5 hands and/or estoppel are relevant defenses to the relief of a permanent injunction. Dkt.
6 40 at 10-12. Again, the Court agrees to the extent that it would be inappropriate to decide
7 this issue on a Rule 12(f) motion. Therefore, the Court denies Plaintiff's motion on this
8 issue.

9 **III. ORDER**

10 Therefore, it is hereby

11 **ORDERED** that Plaintiff's Motion to Strike Defendant's Defenses and
12 Affirmative Defenses (Dkt. 37) is **DENIED**.

13 DATED this 11th day of February, 2010.

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15 BENJAMIN H. SETTLE
16 United States District Judge
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